

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 09-9175

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## APPROVAL OF PROPOSED AMENDMENTS TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

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### WHEREAS:

1. The Texas Disciplinary Rules of Professional Conduct “define proper conduct for purposes of professional discipline” of lawyers in Texas.<sup>1</sup> These Rules, coupled with their interpretive comments, also “constitute a body of principles” to guide lawyers who are attempting to resolve issues of professional discretion through the exercise of moral and professional judgment.<sup>2</sup>

2. The Court adopted the current Texas Disciplinary Rules of Professional Conduct in 1990. Since then, many changes have occurred in the ethical and legal landscape that governs the conduct of lawyers in Texas. In addition, in response to recommendations from the Ethics 2000 Commission, the American Bar Association (ABA) significantly revised the Model Rules of Professional Conduct. Because of the extent to which the body of principles that governs lawyers’ conduct has evolved, the Court decided that a comprehensive review of the Texas Disciplinary Rules of Professional Conduct was in order.

3. In Misc. Docket No. 03-9147, the Court appointed the Task Force on the Texas Disciplinary Rules of Professional Conduct. The Task Force included a public member and members intended to represent the interests of federal prosecutors, corporate practitioners, civil trial practitioners, criminal trial practitioners, the State Bar of Texas Chief Disciplinary Counsel, Texas Commission on Lawyer Discipline, Board of Disciplinary Appeals, Grievance Oversight Committee, Texas Center for Legal Ethics and Professionalism, and State Bar of Texas Committee on Texas

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<sup>1</sup> Tex. Disciplinary R. Prof’l Conduct ¶ 10, pmb1.

<sup>2</sup> *Id.* ¶ 7.

Disciplinary Rules of Professional Conduct.<sup>3</sup> The Court asked the Task Force to study the amended ABA Model Rules of Professional Conduct and compare them with the current Texas Disciplinary Rules of Professional Conduct and other states' rules governing lawyers' conduct. The Court also asked the Task Force to advise the Court of any changes the Task Force deemed appropriate to improve the Texas Disciplinary Rules of Professional Conduct. The Task Force completed these tasks and submitted a report to the Court.

4. The State Bar of Texas Committee on the Texas Disciplinary Rules of Professional Conduct analyzed the Task Force's recommendations in conjunction with the current Texas Disciplinary Rules of Professional Conduct, amended ABA Model Rules of Professional Conduct, and other states' rules governing lawyers' conduct. The State Bar Committee submitted analyses and recommendations to the Court, State Bar of Texas President, and Task Force in a series of written reports.<sup>4</sup>

5. The Court asked the Task Force and State Bar Committee to examine and comment on each other's recommendations. Due to the extent of differences between their recommendations, the Court also requested the formation of a Conference Committee, consisting of Task Force and State Bar Committee members designated by their respective Chairs. The Conference Committee identified all Texas Disciplinary Rules of Professional Conduct for which the Court Task Force and State Bar Committee made substantially similar recommendations, attempted to resolve divergent recommendations, and submitted final recommendations to the Court.

6. The Court analyzed the recommendations of the Task Force, State Bar Committee, and Conference Committee, in conjunction with the current Texas Disciplinary Rules of Professional Conduct and amended ABA Model Rules of Professional Conduct, and made the changes reflected in this Order. Rules that are new or that have been renumbered are so noted by bracketed statements following the title of the Rules. All of the changes in this Order will be redlined against the current

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<sup>3</sup> The Task Force included Thomas H. Watkins (Chair), Judge Robert Pitman, Dawn Miller, Mark White, Christine McKeeman, Susan Saab Fortney, Robert Paul Schuwerk, Ken Raines, Luke Soules, Eduardo Rodriguez, Vincent Perini, Rob Kepple, Beryl Crowley, Sarilee Ferguson, Steve Moyik, and Kenneth Raney.

<sup>4</sup> The composition of the State Bar Committee changed during the relevant time period. The following members participated in recommending revisions to the Texas Disciplinary Rules of Professional Conduct: Lillian B. Hardwick (current Chair), Linda Eads (former Chair), Gary R. Gurwitz, Leila Safi Hobson, Robert Paul Schuwerk (also a Task Force member), Byron F. Egan, Cullen M. Godfrey, Rebecca Ann Gregory, Edna Isabella Ramon, Marcus F. Schwartz, Harlow L. Sprouse, John F. Sutton Jr., Gregory Max Hasley, Michelle Jordan, W. Amon Burton Jr., Patricia Chamblin, Hugh Massey Ray III, Walter W. Steele Jr., James H. Wallenstein, James E. Brill, Ralph H. Brock, William B. Mateja, Mark Perlmutter, James C. Winton, Sally Emerson, and Paul McGreal. G. Allan Van Fleet also participated as a liaison for the State Bar of Texas Board of Directors.

Texas Disciplinary Rules of Professional Conduct and posted on the websites of the Court (at <http://www.supreme.courts.state.tx.us>) and the State Bar of Texas (at <http://www.texasbar.com/>).

7. The State Bar Committee is drafting interpretive comments to reflect the amendments to the Texas Disciplinary Rules of Professional Conduct. The Committee is scheduled to complete its draft of the interpretive comments by the end of 2009.

**IT IS THEREFORE ORDERED** that:

1. The attached amendments to the Texas Disciplinary Rules of Professional Conduct, along with modifications made after public comments are received, will be submitted to the State Bar of Texas Board of Directors for approval and consideration for a referendum to the membership of the State Bar. Public comments should be sent on or before December 31, 2009 to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin, Texas 78711, or [kennon.peterson@courts.state.tx.us](mailto:kennon.peterson@courts.state.tx.us).

2. After this Court receives and finalizes all of the interpretive comments for the amended Texas Disciplinary Rules of Professional Conduct, the interpretive comments will be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>. The interpretive comments will also be sent to the State Bar of Texas Board of Directors for approval and consideration for a referendum to the membership of the State Bar.

3. The Clerk is directed to:

- a. submit a copy of the Order for publication in the *Texas Register*;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>; and
- d. cause a redlined document comparing the current and amended Texas Disciplinary Rules of Professional Conduct to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

SIGNED AND ENTERED this 20th day of October, 2009.

Wallace B. Jefferson  
Wallace B. Jefferson, Chief Justice

Nathan L. Hecht  
Nathan L. Hecht, Justice

Harriet O'Neill  
Harriet O'Neill, Justice

Dale Wainwright  
Dale Wainwright, Justice

David M. Medina  
David M. Medina, Justice

Paul W. Green  
Paul W. Green, Justice

Phil Johnson  
Phil Johnson, Justice

Don R. Willett  
Don R. Willett, Justice

Eva M. Guzman  
Eva M. Guzman, Justice

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**SECTION 9 OF STATE BAR RULES:  
TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT**

**Preamble: A Lawyer's Responsibilities**

1. A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice. Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

2. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's affairs and reporting about them to the client or to others.

3. In all professional functions, a lawyer should zealously pursue a client's interests within the bounds of the law. In doing so, a lawyer should be competent, prompt, and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except to the extent that use or disclosure is required or permitted by law or the Texas Disciplinary Rules of Professional Conduct.

4. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

5. As a public citizen, a lawyer should seek improvement of the law, the administration of justice, and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional



time and civic influence on their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

6. A lawyer should render public interest legal service. The basic responsibility for providing legal services for those unable to pay ultimately rests on the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer, as well as the profession generally. A lawyer may discharge this basic responsibility by providing public interest legal services without a fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, the administration of justice, and by financial support for organizations that provide legal services to persons of limited means.

7. In the law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interests. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of these Rules many difficult issues of professional discretion can arise. The Rules and their Comments constitute a body of principles upon which the lawyer can rely for guidance in resolving such issues through the exercise of sensitive professional and moral judgment. In applying these Rules, lawyers may find interpretive guidance in the Comments.

8. The legal profession has a responsibility to assure that its regulation is undertaken in the public interest rather than in furtherance of parochial or self-interested concerns of the bar, and to insist that every lawyer both comply with its minimum disciplinary standards and aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which the lawyer's actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit no compromise.

### **Preamble: Scope**

10. The Texas Disciplinary Rules of Professional Conduct are rules of reason that define proper conduct for purposes of professional discipline. They are imperatives, cast in the terms “shall” or “shall not.” The Comments are cast in the terms “may” or “should” and are permissive, defining areas in which the lawyer has professional discretion. When a lawyer exercises such discretion, whether by acting or not acting, no disciplinary action may be taken. The Comments also frequently illustrate or explain applications of the Rules, in order to provide guidance for interpreting the Rules and practicing in compliance with the spirit of the Rules. The Comments do not, however, add obligations to the Rules. No disciplinary action may be taken for failure to conform to the Comments.

11. The Rules presuppose a larger legal context shaping the lawyer’s role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers, and substantive and procedural law in general. Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules and Comments do not, however, exhaust the moral and ethical considerations that should guide a lawyer, for no worthwhile human activity can be completely defined by legal rules.

12. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. For purposes of determining the lawyer’s authority and responsibility, individual circumstances and principles of substantive law external to these Rules determine whether a client-lawyer relationship may be found to exist. But there are some duties, such as that of confidentiality, that may attach before a client-lawyer relationship has been established.

13. The responsibilities of government lawyers, under various legal provisions, including constitutional, statutory, and common law, may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state’s attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances in which a private lawyer could not represent multiple private clients. They also may have authority to represent the public interest in circumstances in which a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

14. These Rules make no attempt to prescribe either disciplinary procedures or penalties for violation of a Rule.

15. These Rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a Rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these Rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these Rules can be abused when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extradisciplinary consequences of violating such a duty.

16. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work-product privilege. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work-product privileges.

## **Terminology**

### **Rule 1.00. Terminology**

The following definitions apply to all Texas Disciplinary Rules of Professional Conduct unless the context in which the word or phrase is used requires a different definition.

(a) "Adjudicatory official" denotes a person who serves on a Tribunal.

(b) "Adjudicatory proceeding" denotes the consideration of a matter by a Tribunal.

(c) "Affiliated":

(1) A lawyer is "affiliated" with a firm if either the lawyer or the lawyer's professional entity:

(i) is a shareholder, partner, member, associate, or employee of that firm;

(ii) has any other relationship with that firm, regardless of the title given to it, that provides the lawyer with access to the confidences of the firm's clients that is comparable to that typically afforded to lawyers in category (i); or

(iii) is held out as being in category (i) or (ii).

(2) A lawyer is “affiliated” with another lawyer if either the lawyers or their professional entities have any of the relationships described in categories (i) - (iii) above.

(d) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(e) “Consult” or “consultation” denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(f) “Competent” or “competence” denotes possession of or the ability to timely acquire the legal knowledge, skill, and training reasonably necessary for the representation of the client.

(g) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is provided in writing by the person, or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. If it is not feasible for the lawyer to obtain or transmit the writing at the time the person provides informed consent, then the lawyer must obtain or transmit it within a reasonable time after the person provides informed consent.

(h) “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or a lawyer or lawyers employed in the legal department of a corporation, legal services organization, or other organization, or in a unit of government.

(i) “Fitness” denotes those qualities of physical and mental health that enable a lawyer to discharge the lawyer’s responsibilities to a client in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or an unreliability in carrying out, significant obligations.

(j) “Fraud” or “fraudulent,” when used in relation to conduct by a lawyer, denotes an intent to deceive and either:

- (1) a knowing misrepresentation of a material fact; or
- (2) a knowing concealment of a material fact if there is a duty to disclose the material fact.

(k) “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has adequately explained the material risks of and reasonably available alternatives to the proposed course of conduct.

(l) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

(m) “Partner” denotes a member of a partnership, shareholder in a law firm organized as a professional corporation, or member of an association authorized to practice law.

(n) “Person” includes a legal entity, as well as an individual.

(o) “Personally represents” and “represents”: A lawyer “personally represents” a client in a matter if the lawyer personally exercises legal skill or judgment on behalf of the client in connection with that matter. A lawyer “represents” a client in a matter if the client is personally represented in that matter by that lawyer or by an affiliated lawyer.

(p) “Reasonable” or “reasonably,” when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(q) “Reasonable belief” or “reasonably believes,” when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(r) “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(s) “Substantial” or “substantially,” when used in reference to degree or extent, denotes a material matter of clear significance.

(t) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, an administrative agency, or another body acting in an adjudicative capacity. A legislative body, an administrative agency, or another body acts in an adjudicative capacity when, after the presentation of evidence or legal argument by a party or parties, one or more neutral officials will render a binding legal judgment directly affecting a party’s or parties’ interests in a particular matter.

(u) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording, and e-mail. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment: The terms “fraud” and “fraudulent” do not incorporate all of the elements of common law fraud. For example, for purposes of these Rules, it is not necessary that anyone suffer damages or rely on the misrepresentation or failure to inform. Also, the terms do not include negligent

misrepresentation or negligent failure to apprise another of relevant information. Under subparagraph (j)(2), the duty to disclose a material fact may arise under Texas law or these Rules.

## **Section I. Client-Lawyer Relationship**

### **Rule 1.01. Competent and Diligent Representation**

(a) A lawyer shall not accept or continue employment in a legal matter that the lawyer knows or reasonably should know is beyond the lawyer's competence, unless:

- (1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or
- (2) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that reasonably necessary in the circumstances.

(b) In representing a client, a lawyer shall not:

- (1) neglect a legal matter entrusted to the lawyer; or
- (2) frequently fail to carry out completely the obligations that the lawyer owes to the client.

(c) As used in this Rule, "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Terminology: See Rule 1.00 for definitions of "competence," "competent," "informed consent," "knows," "reasonably," "reasonably should know," and "represents."

### **Rule 1.02. Scope of Representation and Allocation of Authority**

(a) Subject to (b) through (f) and Rule 1.14, a lawyer shall abide by a client's decisions:

- (1) concerning the objectives and general methods of representation;
- (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;
- (3) in a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives, and general methods of the representation if the client provides informed consent.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good

faith effort to determine the validity, scope, meaning, or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by law or these Rules, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Terminology: See Rule 1.00 for definitions of "consult," "consultation," "informed consent," "knows," "reasonable," and "represents."

### **Rule 1.03. Communication**

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter; and
- (4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Terminology: See Rule 1.00 for definitions of "consult," "informed consent," "reasonably," and "represents."

### **Rule 1.04. Fees**

(a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a reasonable lawyer would be left

with a firm belief or conviction that the fee is in excess of a reasonable fee.

(b) Factors that may be considered in determining the reasonableness of a fee include, but are not limited to, the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(c) The scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any change in the basis or rate of the fee or expense shall also be communicated to the client.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or (f). A contingent fee agreement shall:

- (1) be in writing, and signed by the client;
- (2) state the method by which the fee is to be determined, including if there is to be a differentiation in the percentage or percentages that will accrue to the lawyer in the event of settlement, trial, or appeal, and the percentage for each;
- (3) state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; and
- (4) inform the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(e) Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(f) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.



(g) A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is:

- (i) in proportion to the professional services performed by each lawyer; or
- (ii) made between lawyers who assume joint responsibility for the representation;

(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:

- (i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement;
- (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation; and
- (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and

(3) the aggregate fee does not violate (a).

(h) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to (g). Consent by a client or a prospective client without knowledge of the information specified in (g)(2) does not constitute a confirmation within the meaning of this Rule. No lawyer shall collect or seek to collect a fee or expense in connection with any such agreement that is not confirmed in that way, except for:

- (1) the reasonable value of legal services provided to that person; and
- (2) the reasonable and necessary expenses actually incurred on behalf of that person.

(i) Paragraph (g) does not apply to payment made to a former partner or associate pursuant to a separation or retirement agreement, or to payment made to a lawyer referral program in accordance with law.

Terminology: See Rule 1.00 for definitions of “belief,” “firm,” “law firm,” “reasonable,” “represent,” “writing,” and “written.”

### **Rule 1.05. Confidentiality**

(a) Confidential information:

- (1) in the case of a client or former client, is all information relating to representation of the client from whatever source, whether acquired by the lawyer personally or through an agent, other than information that is or becomes generally known or is readily obtainable from

sources generally available to the public; and

(2) in the case of a prospective client, as described in Rule 1.17, is information furnished to the lawyer by that prospective client in the course of seeking legal representation, other than information that is or becomes generally known or is readily obtainable from sources generally available to the public.

(b) Except as permitted by (c), or required by (d), a lawyer shall not knowingly:

- (1) disclose information the lawyer knows or reasonably should know is confidential; or
- (2) use information the lawyer knows or reasonably should know is confidential to the disadvantage of a client, former client, or prospective client.

(c) A lawyer may disclose or use confidential information to the extent reasonably necessary:

- (1) when the client, former client, or prospective client permits the lawyer to do so or provides informed consent to do so;
- (2) except when otherwise instructed, when communicating with:
  - (i) representatives of the client, former client, or prospective client;
  - (ii) any affiliated lawyer or employees of the lawyer or affiliated lawyer; or
  - (iii) any persons who are required to be supervised in accordance with the requirements of Rule 5.03;
- (3) when the lawyer reasonably believes it is necessary:
  - (i) to comply with a court order, law, or these Rules;
  - (ii) to prevent the client, former client, or prospective client from committing a criminal or fraudulent act;
  - (iii) to rectify the consequences of a client or former client's criminal or fraudulent act in the commission of which the lawyer's services had been used;
  - (iv) to prevent reasonably certain death or substantial bodily harm;
  - (v) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, former client, or prospective client;
  - (vi) to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client, former client, or prospective client was involved;
  - (vii) to respond to allegations in any proceeding concerning the lawyer's representation of the client or former client or discussion with a prospective client; or
  - (viii) to carry out the representation effectively, except when otherwise instructed by the client;
- (4) when the lawyer seeks legal advice about the lawyer's compliance with these Rules.

(d) A lawyer shall disclose confidential information:

- (1) when a lawyer has information clearly establishing that a client is likely to commit a

criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, to the extent disclosure reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

(2) when required to do so by Rule 1.07(b)(2)(v)-(vi), 3.03(c)-(e), or 4.01(b).

Terminology: See Rule 1.00 for definitions of “affiliated,” “informed consent,” “knowingly,” “known,” “knows,” “person,” “reasonable,” “reasonably,” “reasonably believes,” “reasonably should know,” and “represents.”

### **Rule 1.06. Conflicts of Interest**

(a) A lawyer shall not, even with informed consent:

- (1) represent opposing parties in the same matter before a tribunal;
- (2) represent a client in a matter when the lawyer’s representation of the client in that matter is or will be both materially and adversely limited by a personal interest of the lawyer or by that lawyer’s responsibilities to another client, a former client, or a third person; or
- (3) represent two or more clients in the same matter if the proposed representation would violate Rule 1.07.

(b) In all other situations in which it reasonably appears that representation may involve a conflict of interest, a lawyer may represent a client in a matter if the lawyer reasonably believes that the lawyer’s representation of the client neither is nor will be materially limited by a personal interest of the lawyer or by the lawyer’s responsibilities to another client, a former client, or a third person, but only if:

- (1) the representation does not violate Rule 1.07; and
- (2) the client provides informed consent, confirmed in writing.

(c) If a lawyer has accepted representation in violation of this Rule, or if a representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

(d) When a lawyer is prohibited by this Rule from representing a client, no affiliated lawyer who knows or reasonably should know of the prohibition shall represent that client, unless the prohibition is based on a personal interest of the prohibited lawyer, and the affiliated lawyer reasonably believes that the representation of the client will not be materially and adversely limited by the personal interest of the prohibited lawyer.

Terminology: See Rule 1.00 for definitions of “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “reasonably,” “reasonably believes,” “reasonably should know,” “represents,” and “tribunal.”

**Rule. 1.07. Conflicts of Interest: Multiple Clients in the Same Matter**

(a) A lawyer shall not represent two or more clients in a matter if the representation would violate any of these Rules.

(b) A lawyer shall not represent two or more clients in a matter unless:

(1) the lawyer reasonably believes that:

(i) the representation does not violate Rule 1.06;

(ii) the clients can agree among themselves to a resolution of any material issue concerning the matter;

(iii) each client is capable of understanding what is in that client’s best interest and making informed decisions;

(iv) the lawyer can deal impartially with each of the clients; and

(v) the representation is unlikely to result in material prejudice to the interests of any of the clients;

(2) prior to undertaking the representation, or as soon as practicable thereafter, the lawyer discloses to the clients in writing the following aspects of joint representation in the matter:

(i) that the client might gain or lose some advantages if represented by separate counsel;

(ii) that the lawyer cannot serve as an advocate for one client in the matter against any of the other clients, but instead must assist all of them in pursuing their common purposes, as a consequence of which each must be willing to make independent decisions without the lawyer’s advice concerning whether to agree to any proposed resolution of any issues concerning the matter;

(iii) that the lawyer must deal impartially with each of the clients;

(iv) that information received by the lawyer or by any affiliated lawyer or firm from or on behalf of any jointly represented client concerning the matter may not be confidential or privileged as between the clients;

(v) that the lawyer will be required to disclose information concerning the matter to any jointly represented client if the lawyer knows that information would likely materially affect the position of that client, even if requested by another jointly represented client not to do so;

(vi) that the lawyer will be required to correct any false or misleading statement or omission concerning the matter made by or on behalf of any jointly represented client, if the lawyer knows failure to do so would likely materially affect the position

of any client, even if requested by another jointly represented client not to do so;  
(vii) that the lawyer may not be able to continue representing any of the clients if discharged by any one of them or if the lawyer is required to withdraw from representation under these Rules; and  
(viii) that the representation of all clients by a single lawyer or firm will not necessarily expedite handling of the matter or reduce associated attorneys' fees and expenses; and

(3) the lawyer obtains each client's informed consent, confirmed in writing, to the representation after making the determinations required by (b)(1), and as soon as reasonably practicable after making the disclosures required by (b)(2).

(c) A lawyer representing two or more clients in a matter shall, with respect to that matter, conduct the representation in accordance with the determinations and disclosures set forth in this Rule, except that:

(1) the requirement that the lawyer disclose information described in (b)(2)(v) may be waived by all clients' informed consent that the lawyer will keep mutually agreed upon specified information confidential; and

(2) the lawyer may rely on this informed consent only if a disinterested lawyer would reasonably conclude that all clients could make adequately informed decisions about the matter without having the information otherwise required to be disclosed under (b)(2)(v).

(d) A lawyer representing multiple clients in a matter must withdraw from representing each client in the matter if the lawyer, for whatever reason, will not make disclosures required in:

(1) subparagraph (b)(2)(v), unless the failure to make such disclosures is permitted by (c); and

(2) subparagraph (b)(2)(vi).

(e) If a lawyer is prohibited from representing two or more persons in a matter, no lawyer or firm affiliated with the lawyer may do so if the representation by that other lawyer or firm would violate Rule 1.06.

(f) When a lawyer represents multiple clients pursuant to a court order or appointment, and the court requires or permits the lawyer to conduct the representation in accordance with standards that differ from those set out in (a)-(e), the lawyer may comply with those different standards notwithstanding this Rule.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knows," "person," "reasonably," "reasonably believes," "represents," and "writing."

**Rule 1.08. Conflicts of Interest: Prohibited Transactions**

(a) A lawyer shall not enter into a business transaction with a client, other than a standard commercial transaction between the lawyer and the client for products or services that the client generally markets to others, unless:

(1) the lawyer reasonably believes that the terms of the transaction between the lawyer and the client:

(i) are fair and reasonable to the client; and

(ii) if known to the lawyer and not known to the client, are fully disclosed in a manner that can be reasonably understood by the client;

(2) the lawyer advises the client of the desirability of seeking, and gives the client a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and

(3) the client provides informed consent, in a writing signed by the client, to the material terms of the transaction and the lawyer's role in the transaction, including:

(i) whether the lawyer is representing the client in the transaction;

(ii) if applicable, the possible material adverse consequences to the lawyer-client relationship if the lawyer represents the client in connection with the transaction; and

(iii) anything of value the lawyer anticipates receiving as a result of the transaction other than those benefits explicitly set out in the terms of the transaction.

(b) A lawyer shall neither prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, nor solicit any substantial gift from a client for the lawyer or for a person related to the lawyer, unless the lawyer or other person is related to the client. For the purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, and other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(c) Prior to the conclusion of all aspects of the matter giving rise to a lawyer's representation, a lawyer shall not make or negotiate an agreement with a client, prospective client, or former client, or anyone acting on that person's behalf, that gives the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(d) A lawyer shall not provide financial assistance to a client in connection with contemplated or pending proceedings before a tribunal, except that:

(1) a lawyer may advance or guarantee the costs and expenses of such proceedings, and reasonably necessary medical and living expenses, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay costs and expenses of such proceedings

on behalf of the client.

(e) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client provides informed consent;
- (2) the lawyer reasonably believes that the lawyer's exercise of independent professional judgment on behalf of the client will not be affected; and
- (3) information relating to representation of the client is protected as required by Rule 1.05.

(f) Except as otherwise authorized by law, a lawyer who represents two or more clients shall not make an aggregate settlement of the claims of or against that lawyer's clients, or in a criminal case an aggregated agreement to guilty or nolo contendere pleas, unless the lawyer obtains the informed consent of each client, confirmed in writing, after advising each client of:

- (1) the total amount of the settlement or result of the agreement;
- (2) the existence and nature of all claims, defenses, or pleas involved;
- (3) the nature and extent of each client's participation in the settlement or agreement, whether by contribution to payment, share of receipts, or resolution of criminal charges;
- (4) the total fees and costs to be paid to the lawyer from the proceeds, or by an opposing party or parties; and
- (5) the method by which the costs are to be apportioned to each client.

(g) A lawyer shall not:

- (1) make an agreement with a client prospectively limiting the lawyer's liability to a client for malpractice or other professional misconduct unless the client is represented by independent legal counsel in making the agreement;
- (2) make an agreement with a client that requires a dispute between the lawyer and client to be referred to binding arbitration unless either:
  - (i) the client is represented by independent legal counsel in making the agreement; or
  - (ii) the lawyer discloses to the client, in a manner that can reasonably be understood by the client, the scope of the issues to be arbitrated and the fact that the client will waive a trial before a judge or jury on these issues and that the rights of appeal may be limited; or
- (3) settle a claim or potential claim for malpractice or other professional misconduct with a client or former client of the lawyer not represented by independent legal counsel with respect to that claim unless the lawyer advises that person in writing of the desirability of seeking and gives a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(h) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation in which the lawyer is representing a client, except that the lawyer may:

- (1) acquire a lien granted by law to secure the lawyer's fee or expenses; and
- (2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.

(i) When one lawyer is prohibited by this Rule from engaging in particular conduct, no affiliated lawyer who knows or reasonably should know of the prohibition shall engage in that conduct.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "informed consent," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "reasonably should know," "represents," "tribunal," and "writing."

#### **Rule 1.09. Conflicts of Interest: Former Client**

(a) Unless the former client provides informed consent, confirmed in writing:

- (1) a lawyer who personally has formerly represented a client in a matter shall not thereafter knowingly represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client; and
- (2) if a lawyer prohibited by (a)(1) has left the firm with which the lawyer was affiliated at the time the lawyer personally represented the former client, no lawyer presently affiliated with that firm, and who knows of the prohibition, shall knowingly represent another person in the same or a substantially related matter to that in which the formerly affiliated lawyer represented the client if any lawyer remaining in the firm has information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(b) Unless the former client provides informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was affiliated previously represented a client:

- (1) whose interests are materially adverse to the interests of that person; and
- (2) about whom the lawyer acquired information protected by Rule 1.05 or 1.09(d) that is material to the matter.

(c) Unless the former client provides informed consent, confirmed in writing:

- (1) a lawyer who personally has formerly represented a client in a matter shall not thereafter knowingly represent another person in a matter adverse to the former client in which such other person questions the validity of the lawyer's services or work product for the former client; and
- (2) if a lawyer prohibited by (c)(1) has left the firm with which the lawyer was affiliated at



the time the lawyer provided the services or work product to the former client, no lawyer presently affiliated with that firm, and who knows of the prohibition, shall knowingly represent a person in a matter that requires a challenge to the formerly affiliated lawyer's services or work product for the former client.

(d) A lawyer who personally has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules provide, or when the information is or becomes generally known or is readily obtainable from sources generally available to the public; or
- (2) disclose information relating to the representation except as these Rules provide.

(e) For purposes of this Rule, matters are "substantially related" if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knowingly," "knows," "person," "personally represents," and "represents."

**Rule 1.10. Special Conflicts of Interest: Former and Current Government Officers and Employees**

(a) Except as law may otherwise expressly permit, a lawyer shall not personally represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency has provided informed consent, confirmed in writing, to the representation.

(b) No lawyer affiliated with a lawyer prohibited by (a) who knows of the prohibition may represent the client in such a matter unless:

- (1) the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the appropriate government agency disclosing the affiliation of the prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not personally represent a private client whose interests are adverse to that

person in a matter in which the lawyer knows or reasonably should know the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under government authority and that, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and that is not otherwise available to the public.

(d) No lawyer affiliated with a lawyer prohibited by (c) who knows of the prohibition may represent the private client in the matter unless the prohibited lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(e) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee shall not:

(1) participate in a matter involving a former private client if doing so would violate Rule 1.09;

(2) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency provides its informed consent, confirmed in writing; or

(3) negotiate for private employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a court lawyer to an adjudicatory official may negotiate for private employment in accordance with Rule 1.11.

(f) As used in this Rule, the term “matter” includes:

(1) any adjudicatory proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other comparable particular action or transaction involving a specific party or parties, but not regulation-making or rule-making proceedings or assignments; and

(2) any other action or transaction covered by conflict of interest statutes or by conflict of interest rules of the appropriate government agency.

(g) As used in this Rule, the term “private client” means any person, including a government agency, who is represented by the lawyer when the lawyer is engaged in the private practice of law.

(h) As used in this Rule, the term “screened” means that the law firm:

(1) has instituted measures adequate to prevent participation of the prohibited lawyer in the matter and to protect from disclosure information that the prohibited lawyer is obligated to protect under applicable law or these Rules; and

(2) can demonstrate that the prohibited lawyer did not disclose the information described in (h)(1) before the law firm implemented the screening measures described in (h)(1).

Terminology: See Rule 1.00 for definitions of “adjudicatory official,” “adjudicatory proceeding,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “law firm,” “person,” “personally represents,” “reasonably should know,” “represents,” “substantially,” and “written.”

**Rule 1.11. Special Conflicts of Interest: Adjudicatory Officials, Third-Party Neutrals, and Court Lawyers**

(a) A lawyer shall not personally represent anyone in connection with a matter in which the lawyer participated personally and substantially as an adjudicatory official or a court lawyer to an adjudicatory official, or as a third-party neutral in a nonbinding proceeding, unless all parties to the proceeding provide informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a pending matter in which the lawyer is participating personally and substantially as an adjudicatory official, or as a third-party neutral in a nonbinding proceeding. A lawyer serving as a court lawyer to an adjudicatory official may negotiate for employment with a party or lawyer involved in a pending matter in which the court lawyer is participating personally and substantially, but only after the court lawyer has notified the adjudicatory official.

(c) If a lawyer is prohibited from representation by (a), an affiliated lawyer who knows of the prohibition shall not represent a client in the matter unless:

- (1) the prohibited lawyer is timely screened from any participation in the matter in accordance with Rule 1.10(h) and is apportioned no part of the fee therefrom; and
- (2) written notice is promptly given to the parties and any appropriate tribunal disclosing the affiliation of the prohibited lawyer and the screening measures adopted to ensure compliance with this Rule.

(d) For purposes of this Rule, “court lawyer” includes law clerks, briefing attorneys, and staff attorneys, whether or not assigned to a particular adjudicatory official, as well as persons who were not yet licensed as lawyers at the time they began providing services to a tribunal.

Terminology: See Rule 1.00 for definitions of “adjudicatory official,” “affiliated,” “confirmed in writing,” “informed consent,” “knows,” “person,” “personally represents,” “represents,” “substantially,” “tribunal,” and “written.”

**Rule 1.12. Organization as a Client**

(a) Notwithstanding that a lawyer reports to and takes direction from an organization’s duly authorized constituents, a lawyer employed or retained to provide legal services for an organization

represents that organization and shall proceed as reasonably necessary in the best legal interest of the organization at all times, including the situations described in (d).

(b) A lawyer shall explain that the lawyer represents the organization rather than an owner, director, officer, employee, or other constituent of the organization when the lawyer knows or reasonably should know the organization's interests are adverse to the interests of that constituent, or when an explanation appears reasonably necessary to avoid misunderstanding on the part of that constituent.

(c) A lawyer shall not jointly represent the organization and an owner, director, officer, employee, or other constituent of the organization in a matter unless the joint representation is in conformity with Rule 1.07.

(d) A lawyer who represents an organization shall initiate reasonable remedial actions whenever the lawyer has information clearly establishing that:

- (1) an owner, director, officer, employee, or other constituent of the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law that reasonably may be imputed to the organization;
- (2) the violation is likely to result in substantial injury to the organization; and
- (3) the violation is related to a matter within the scope of the lawyer's representation of the organization.

(e) Unless otherwise required by law or these Rules, reasonable remedial actions may include, but are not limited to, one or more of the following:

- (1) asking for reconsideration of the matter;
- (2) advising that a separate legal opinion on the matter be sought for presentation to an appropriate authority within the organization; and
- (3) referring the matter to a higher authority within the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(f) If, despite the lawyer's initiation of reasonable remedial action, the organization continues to pursue, or fails to address in a timely and appropriate manner, a matter called to its attention by the lawyer pursuant to (d) and (e), then the lawyer may disclose confidential information to the extent permitted by Rule 1.05.

(g) A lawyer who resigns or is terminated from representing an organization shall comply with Rule 1.16. Upon doing so, a lawyer is excused from proceeding further as set out in (d), (e), and (f). Rule 1.05 governs any further obligations regarding confidential information.

Terminology: See Rule 1.00 for definitions of “knows,” “reasonable,” “reasonably,” “reasonably should know,” “represents,” and “substantial.”

**Rule 1.13. Prohibited Sexual Relations [new, renumbered]**

(a) A lawyer shall not condition the representation of a client or prospective client, or the quality of such representation, on having any person engage in sexual relations with the lawyer.

(b) A lawyer shall not solicit or accept sexual relations as payment of fees.

(c) A lawyer shall not have sexual relations with a client that the lawyer is personally representing unless the lawyer and client are married to each other, or are engaged in an ongoing consensual sexual relationship that began before the representation.

Terminology: See Rule 1.00 for definitions of “person,” “personally represents,” and “represents.”

**Rule 1.14. Diminished Capacity [new, renumbered]**

(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client’s confidential information to the extent the lawyer reasonably believes is necessary to protect the client’s interests, unless otherwise prohibited by law.

Terminology: See Rule 1.00 for definitions of “reasonably,” “reasonably believes,” “represents,” and “substantial.”

**Rule 1.15. Safekeeping Property [renumbered]**

(a) When a lawyer receives property in connection with a representation that at the time of receipt belongs in whole or in part to a client or third person, the lawyer shall safeguard the property in trust and hold it separate from the lawyer's own property until distributed in accordance with (f) or (g).

In addition, the lawyer shall:

- (1) deposit any funds in one or more accounts designated as trust accounts, maintained in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person;
- (2) identify any other client property as such and safeguard it appropriately; and
- (3) create and maintain complete records of all trust account funds and other property required to be held in trust by this Rule and preserve those records for a period of five years from the termination of the representation.

(b) Notwithstanding (a), a lawyer may deposit the lawyer's own funds in a client trust account for the purpose of paying service charges on that account.

(c) A lawyer shall deposit unearned fees and advanced expenses into a client trust account, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property, a lawyer shall notify with reasonable promptness:

- (1) any client of the receipt and proposed distribution of such funds or other property, provided the client has a right to any portion of such funds or other property; and
- (2) any third person who the lawyer reasonably believes is entitled to notice of the lawyer's receipt of such funds or other property.

(e) A lawyer shall render with reasonable promptness a full accounting of funds or other property held by that lawyer in trust:

- (1) to a client when required by these Rules or requested by the client; and
- (2) to a third person who requests the accounting and who the lawyer reasonably believes has a right to any portion of such funds or other property, unless a court order relieves the lawyer from providing the full accounting.

(f) If the lawyer receives notice from the client or a third person of a dispute concerning the proposed distribution, the lawyer shall proceed in accordance with (g). Otherwise, the lawyer shall deliver with reasonable promptness to the client or third person such funds or other property that each is entitled to receive.

(g) When, in the course of representation, a lawyer is in possession of funds or other property in

which two or more persons, one of whom may be the lawyer, claim interests, and a dispute arises concerning their respective interests, the lawyer shall retain the disputed portion of the funds or other property in a client trust account, deposit it into the registry of a court, or safeguard it in any other manner agreeable to those claiming an interest. The lawyer shall distribute with reasonable promptness all portions of the property as to which the interests are not in dispute.

Terminology: See Rule 1.00 for definitions of “informed consent,” “person,” “reasonable,” “reasonably believes,” and “represents.”

**Rule 1.16. Declining or Terminating Representation [renumbered]**

(a) Except as stated in (c), a lawyer shall not represent a client or, when representation has commenced, shall withdraw from the representation of a client, if:

- (1) the representation will result in violation of law or these Rules;
- (2) the lawyer’s physical or mental condition materially impairs the lawyer’s fitness to represent the client; or
- (3) the lawyer is discharged.

(b) Except as required by (a), a lawyer shall not withdraw from representing a client unless:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer’s services to perpetrate a crime or fraud;
- (4) a client insists upon pursuing an objective or taking action that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

(c) A lawyer shall comply with these Rules, applicable rules of practice or procedure, and applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable

to protect a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law only if such retention will not prejudice the client in the subject matter of the representation.

Terminology: See Rule 1.00 for definitions of "fitness," "reasonable," "reasonably," "reasonably believes," "represents," "substantially," and "tribunal."

**Rule 1.17. Prospective Clients [new]**

(a) A person who in good faith discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) A lawyer who has had a discussion with a prospective client shall not use or disclose confidential information learned in the discussion, except as provided in Rule 1.05 or (d)(2).

(c) A lawyer who has received confidential information during a discussion with a prospective client shall not represent a client with interests materially adverse to those of the prospective client in the same or a substantially related matter, except as provided in (d)(1) or (d)(2). No lawyer in a firm with which that lawyer is affiliated may knowingly represent a client in such a matter.

(d) When a lawyer has received confidential information during a discussion with a prospective client, representation of a client with interests materially adverse to those of the prospective client in the same or a substantially related matter is permissible if:

(1) the prospective client has provided informed consent, confirmed in writing, to the representation; or

(2) the lawyer conditioned the discussion with the prospective client on the prospective client's informed consent that no information disclosed during the discussion would be confidential or prohibit the lawyer from representing a different client in the matter.

(e) For purposes of this Rule, matters are "substantially related" if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the discussion with the prospective client would materially advance a client's position in a subsequent matter.

Terminology: See Rule 1.00 for definitions of "affiliated," "confirmed in writing," "firm," "informed consent," "knowingly," "person," "represents," and "substantially."



## **Section II. Counselor**

### **Rule 2.01. Advisor**

In representing a client, a lawyer shall exercise independent professional judgment and give candid advice.

Terminology: See Rule 1.00 for a definition of “represents.”

### **Rule 2.02. Evaluation for Use by Third Persons**

A lawyer shall not provide an evaluation of a matter affecting a client for the use of someone other than the client unless:

- (a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer’s relationship with the client; and
- (b) the client provides informed consent.

Terminology: See Rule 1.00 for definitions of “informed consent,” “person,” and “reasonably believes.”

## **Section III. Advocate**

### **Rule 3.01. Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes there is a nonfrivolous basis for doing so.

Terminology: See Rule 1.00 for a definition of “reasonably believes.”

### **Rule 3.02. Minimizing the Burdens and Delays of Litigation**

In the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

Terminology: See Rule 1.00 for a definition of “reasonably.”

### **Rule 3.03. Candor Toward a Tribunal**

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (2) fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) offer or use evidence that the lawyer knows to be false.

(b) Notwithstanding any other of these Rules, a lawyer may refuse to offer or use evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes, but does not know, is false.

(c) If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered or used material evidence and the lawyer comes to know of its falsity, the lawyer shall make a reasonable effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If those efforts are unsuccessful, the lawyer shall take other reasonable remedial measures, including, if necessary, disclosure of the falsehood to the tribunal.

(d) A lawyer who represents a client in an adjudicatory proceeding and who knows that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding, shall take reasonable remedial measures, including, if necessary, disclosure of the falsehood to the tribunal.

(e) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts that are known to the lawyer, whether or not the facts are adverse, and that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision.

(f) The obligations stated in this Rule continue until remedial legal measures are no longer reasonably possible.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "knowingly," "known," "knows," "person," "reasonable," "reasonably," "reasonably believes," "represents," and "tribunal."

### **Rule 3.04. Fairness in Adjudicatory Proceedings**

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy, or conceal a document or other material that a lawyer would reasonably believe has potential or actual evidentiary value; or counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or pay, offer to pay, or acquiesce in the offer or payment of compensation to a witness or other entity contingent upon the content of the testimony of the witness or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for loss of time in attending or testifying; and
- (3) a reasonable fee for the professional services of an expert witness;

(c) except as stated in (d), in representing a client before a tribunal:

- (1) habitually violate an established rule of procedure or evidence;
- (2) state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness;
- (3) state a personal opinion as to the justness of a cause, credibility of a witness, culpability of a civil litigant, or guilt or innocence of an accused, except that a lawyer may argue the lawyer's analysis of the evidence and other permissible considerations for any position or conclusion with respect to the matters stated in this Rule;
- (4) ask any question intended to degrade a witness or other person except when the lawyer reasonably believes that the question will lead to relevant and admissible evidence; or
- (5) engage in conduct intended to disrupt the proceedings;

(d) knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal, except for an open refusal based either on an assertion that no valid obligation exists or on the client's willingness to accept any sanctions arising from such disobedience; or

(e) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Terminology: See Rule 1.00 for definitions of “adjudicatory proceeding,” “competent,” “knowingly,” “person,” “reasonable,” “reasonably,” “reasonably believes,” “represents,” and “tribunal.”

### **Rule 3.05. Maintaining the Impartiality of a Tribunal**

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing the tribunal concerning a pending matter other than:

- (1) in the course of official proceedings in the cause;
- (2) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or the adverse party if the adverse party is not represented by a lawyer; or
- (3) orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.

Terminology: See Rule 1.00 for definitions of “represents,” “tribunal,” and “writing.”

### **Rule 3.06. Maintaining the Integrity of the Jury System**

(a) A lawyer shall not:

- (1) conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a venire member or juror; or
- (2) seek to influence a venire member or juror concerning the merits of a pending matter by means prohibited by law or applicable rules of practice or procedure.

(b) Prior to discharge of the jury from further consideration of a matter, a lawyer connected with the matter shall not communicate with or cause another to communicate with anyone the lawyer knows to be a venire member, juror, or alternate juror, except in the course of official proceedings.

(c) During the trial of a case, a lawyer not connected with the case shall not communicate with or cause another to communicate with a juror or alternate juror concerning the matter.

(d) After discharge of the jury from further consideration of a matter with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass the juror or to influence the juror’s actions in future jury service.

(e) All restrictions imposed by this Rule on a lawyer also apply to communications with or investigations of a venire member's or juror's family member.

(f) A lawyer shall reveal promptly to the court improper conduct, of which the lawyer has knowledge, by a venire member or juror, or by another toward a venire member, juror, or venire member's or juror's family member.

Terminology: See Rule 1.00 for a definition of "knows."

### **Rule 3.07. Trial Publicity**

(a) A lawyer who is participating or who has participated in the investigation or litigation of a matter shall not make an extrajudicial statement the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicatory proceeding.

(b) This Rule does not preclude a lawyer from:

- (1) responding to allegations of misconduct made against that lawyer, provided that the lawyer complies with the limitations in (a); or
- (2) making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this subparagraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(c) No lawyer affiliated in a firm or government agency with a lawyer subject to (a) shall make a statement prohibited by (a).

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "affiliated," "firm," "knows," "reasonable," "reasonably should know," and "substantial."

### **Rule 3.08. Lawyer as a Witness**

(a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

- (3) the testimony relates to the nature and value of legal services rendered in the case;
- (4) the lawyer is a party to the action and is appearing pro se; or
- (5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the adjudicatory proceeding and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer knows or reasonably should know that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client provides informed consent.

(c) Without the client's informed consent, a lawyer may not act as an advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by (a) or (b) from serving as an advocate.

(d) If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

Terminology: See Rule 1.00 for definitions of "adjudicatory proceeding," "believes," "firm," "informed consent," "knows," "reasonably should know," "substantial," "substantially," and "tribunal."

### **Rule 3.09. Special Responsibilities of a Prosecutor**

The prosecutor in a criminal case shall:

(a) not prosecute or threaten to prosecute a charge the prosecutor knows is not supported by probable cause;

(b) not conduct or assist in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights;

(d) timely disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

Terminology: See Rule 1.00 for definitions of “known,” “knows,” “person,” “reasonable,” and “tribunal.”

### **Rule 3.10. Advocate in Nonadjudicatory Proceedings**

A lawyer representing a client before a legislative or administrative body in a nonadjudicatory proceeding shall disclose that the appearance is in a representative capacity and shall conform to Rules 3.04(a) through (d), 3.05(a), and 4.01.

Terminology: See Rule 1.00 for definitions of “adjudicatory proceeding,” and “represents.”

## **Section IV. Non-Client Relationship**

### **Rule 4.01. Truthfulness in Statements to Others**

In the course of representing a client, a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client.

Terminology: See Rule 1.00 for definitions of “knowingly,” “person,” and “represents.”

### **Rule 4.02. Communication With One Represented by Counsel**

(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or government entity the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(b) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do

so.

- (c) For the purpose of this Rule, “organization” or “government entity” means a person who:
- (1) has managerial responsibility within an organization or government entity that relates to the subject of the representation; or
  - (2) is employed by such organization or government entity and whose act or omission in connection with the subject of representation may make the organization or government entity vicariously liable for such act or omission.

(d) When a person, organization, or government entity that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by (a) from giving such advice without notifying or seeking consent of the first lawyer.

Terminology: See Rule 1.00 for definitions of “knows,” “person,” and “represents.”

#### **Rule 4.03. Dealing With an Unrepresented Person**

A lawyer who communicates on behalf of a client with a person who is not represented by counsel shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Terminology: See Rule 1.00 for definitions of “knows,” “person,” “reasonable,” “reasonably should know,” and “represents.”

#### **Rule 4.04. Respect for Rights of a Third Person**

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to harass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

- (b) A lawyer shall not present, participate in presenting, or threaten to present:
- (1) criminal or disciplinary charges solely to gain an advantage in a civil matter; or
  - (2) civil, criminal, or disciplinary charges against a complainant, witness, or potential witness in a bar disciplinary proceeding solely to prevent participation by the complainant, witness, or potential witness in the bar disciplinary proceeding.

Terminology: See Rule 1.00 for definitions of “person,” “represents,” and “substantial.”



## Section V. Law Firms and Associations

### **Rule 5.01. Responsibilities of a Managerial or Supervisory Lawyer**

A lawyer shall be subject to discipline because of another lawyer's violation of these Rules if the lawyer has managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and that managerial or supervisory lawyer:

- (a) orders, encourages, or knowingly permits the conduct involved; or
- (b) with knowledge of the other lawyer's violation of these Rules, knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of the other lawyer's violation.

Terminology: See Rule 1.00 for definitions of "law firm," "knowingly," and "reasonable."

### **Rule 5.02. Responsibilities of a Supervised Lawyer**

- (a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.
- (b) A supervised lawyer does not violate these Rules if that lawyer acts in accordance with a managerial or supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Terminology: See Rule 1.00 for definitions of "person" and "reasonable."

### **Rule 5.03. Responsibilities Regarding Nonlawyers**

A lawyer shall be subject to discipline for the conduct of a nonlawyer employed or retained by or affiliated with a lawyer or law firm that would be a violation of these Rules if engaged in by a lawyer, if:

- (a) the lawyer has direct supervisory authority over the nonlawyer and fails to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations;
- (b) the lawyer orders, encourages, or knowingly permits the conduct involved; or

(c) the lawyer:

- (1) has managerial authority in the law firm that has retained, employed, or affiliated the nonlawyer, or has direct supervisory authority over such nonlawyer; and
- (2) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action within the scope of the lawyer's authority to avoid or mitigate the consequences of that nonlawyer's misconduct.

Terminology: See Rule 1.00 for definitions of "affiliated," "knowingly," "law firm," and "reasonable."

#### **Rule 5.04. Professional Independence of a Lawyer**

(a) A lawyer or law firm shall not share or promise to share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order, may provide for the payment of money, over a reasonable period of time, to the lawyer's estate to or for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order;
- (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer;
- (3) a lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share legal fees with a lawyer referral service in accordance with law.

(b) A lawyer shall not form a firm with a nonlawyer if any of the activities of the firm consists of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Terminology: See Rule 1.00 for definitions of “firm,” “partner,” “person,” and “reasonable.”

**Rule 5.05. Unauthorized Practice of Law<sup>5</sup>**

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Terminology: See Rule 1.00 for a definition of “person.”

**Rule 5.06. Restrictions on Right to Practice**

A lawyer shall not participate in offering or making:

(a) a firm, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a suit or controversy, except that as part of the settlement of a disciplinary proceeding against a lawyer an agreement may be made placing restrictions on the right of that lawyer to practice.

Terminology: See Rule 1.00 for a definition of “firm.”

**Rule 5.07. Prohibited Discriminatory Activities [renumbered]**

(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.

(b) Paragraph (a) does not apply to a lawyer’s decision whether to represent a particular person in

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<sup>5</sup> The Court is still considering proposed revisions to Rule 5.05. At this time, there are no changes to the text of the rule; however, the Court incorporated a terminology reference directly after the rule.

connection with an adjudicatory proceeding, or to the process of jury selection, or to communications protected as “confidential information” under these Rules. See Rule 1.05(a)-(b). It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in (a) if that advocacy:

- (1) is necessary in order to address any substantive or procedural issues raised by the proceeding; and
- (2) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice or procedure.

Terminology: See Rule 1.00 for definitions of “adjudicatory proceeding,” “person,” and “tribunal.”

## **Section VI. Public Service**

### **Rule 6.01. Appointments by a Tribunal**

- (a) When a tribunal appoints a lawyer to represent a person, the lawyer shall represent the person until the representation is terminated in accordance with Rule 1.16(c).
- (b) A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:
  - (1) representing the client is likely to result in violation of law or these Rules;
  - (2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
  - (3) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.

Terminology: See Rule 1.00 for definitions of “person,” “reasonable,” “represents,” and “tribunal.”

### **Rule 6.02. Membership in Legal Services Organization [renumbered]**

A lawyer serving as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, shall not knowingly participate in a decision or action of the organization if:

- (a) participating in the decision would violate the lawyer’s obligations to a client under Rule 1.06; or
- (b) the decision could have a material adverse effect on the representation of any client of the organization whose interests are adverse to a client of the lawyer.

Terminology: See Rule 1.00 for definitions of “knowingly,” “law firm,” and “represents.”

**Rule 6.03. Law Reform Activities Affecting Client Interests [new]**

A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

Terminology: See Rule 1.00 for a definition of “knows.”

**Section VII. Information About Legal Services<sup>6</sup>**

**Rule 7.01. Firm Names and Letterhead**

(a) A lawyer in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain “P.C.,” “P.A.,” “L.L.P.,” “P.L.L.C.,” or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name.

(b) A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

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<sup>6</sup> The Rules in Section VII were revised significantly in 2005. Neither the Court Task Force nor the State Bar Committee recommended additional changes to these Rules at this time. In this Order, with the exception of modifying a reference in Rule 7.03(c) to renumbered Rule 1.04(g), the Court likewise does not propose any revisions to these Rules.

(d) A lawyer shall not hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.

(e) A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.

(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).

Terminology: See Rule 1.00 for definitions of "firm," "partner," and "substantial."

#### **Rule 7.02. Communications Concerning a Lawyer's Services**

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) contains any reference in a public media advertisement to past successes or results obtained unless

(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict,

(ii) the amount involved was actually received by the client,

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent

to handle legal matters in each such area of practice; or  
(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified by the Texas Board of Legal Specialization at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language.

Terminology: See Rule 1.00 for definitions of “competent,” “firm,” and “tribunal.”

### **Rule 7.03. Prohibited Solicitations and Payments**

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f), seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer’s advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer’s doing so is the lawyer’s pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization’s members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02(a); or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any

lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(g) or by paragraph (b) of this Rule.

(d) A lawyer shall not enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).

(e) A lawyer shall not participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(f) As used in paragraph (a), “regulated telephone or other electronic contact” means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Terminology: See Rule 1.00 for definitions of “firm,” “fraud,” “fraudulent,” “knows,” “person,” “reasonable,” and “reasonably believes.”

#### **Rule 7.04. Advertisements in the Public Media**

(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:

(1) A lawyer admitted to practice before the United States Patent Office may use the designation “Patents,” “Patent Attorney,” or “Patent Lawyer,” or any combination of those terms. A lawyer engaged in the trademark practice may use the designation “Trademark,” “Trademark Attorney,” or “Trademark Lawyer,” or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in “Intellectual Property Law,” “Patent, Trademark, Copyright Law and Unfair Competition,” or any of those terms.

(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to



the areas of law in which the lawyer will accept referrals.

(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.

(b) A lawyer who advertises in the public media:

(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and

(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:

(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, [area of specialization] — Texas Board of Legal Specialization;" and

(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified [area of specialization] [name of certifying organization]," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and

(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement:

(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously and in language easily understood by an ordinary consumer.

- (d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the internet, or electronic or digital media.
- (e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.
- (f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.
- (g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.
- (h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the percentage is computed before or after expenses are deducted from the recovery.
- (i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.
- (j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:
- (1) that other office is staffed by a lawyer at least three days a week; or
  - (2) the advertisement states:
    - (i) the days and times during which a lawyer will be present at that office, or
    - (ii) that meetings with lawyers will be by appointment only.
- (k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the

public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers, or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers, or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the internet must display the statements and disclosures required by

Rule 7.04.

Terminology: See Rule 1.00 for definitions of “competence,” “law firm,” “knows,” “person,” “reasonably,” “reasonably believes,” “writing,” and “written.”

**Rule 7.05. Prohibited Written, Electronic, or Digital Solicitations**

(a) A lawyer shall not send, deliver, or transmit, or knowingly permit or knowingly cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

- (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;
- (2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or
- (3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked “ADVERTISEMENT” on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word “ADVERTISEMENT” shall be:

- (i) in a color that contrasts sharply with the background color; and
- (ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger;

(2) shall, in the case of an electronic mail message, be plainly marked “ADVERTISEMENT” in the subject portion of the electronic mail and at the beginning of the message’s text;

(3) shall not be made to resemble legal pleadings or other legal documents;

(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or pamphlet, the nature of the legal problem of the prospective client or non-client; and

(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s).

(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded

telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of any such communication delivered to the recipient by nonelectronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an “ADVERTISEMENT”;

(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;

(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audiovisual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);

(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation’s or message’s conclusion: and

(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement:

(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and

(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.

(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.

(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.

(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form of electronic solicitation communication:

(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;

(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with

- the prospective client's specific existing legal problem of which the lawyer is aware;
- (3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or
  - (4) that is requested by the prospective client.

Terminology: See Rule 1.00 for definitions of "fraud," "fraudulent," "knowingly," "law firm," "person," "writing," and "written."

### **Rule 7.06. Prohibited Employment**

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Terminology: See Rule 1.00 for definitions of "firm," "knowingly," "knows," "partner," "person," and "reasonably should know."

### **Rule 7.07. Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations**

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

- (1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;
- (2) a completed lawyer advertising and solicitation communication application; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

- (1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;
- (2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;
- (3) a statement of when and where the advertisement has been, is, or will be used;
- (4) a completed lawyer advertising and solicitation communication application form; and
- (5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

- (1) the intended initial access page of a website;
- (2) a completed lawyer advertising and solicitation communication application form; and
- (3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such websites.

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for preapproval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Lawyer Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action, but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts, and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information,

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as “attorney,” “lawyer,” “law office,” or “firm”;

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;



- (x) any fee for initial consultation and fee schedule;
  - (xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;
  - (xii) in the case of a website, links to other websites;
  - (xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;
  - (xiv) any disclosure or statement required by these rules; and
  - (xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;
- (2) an advertisement in the public media that:
- (i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and
  - (ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;
- (3) a listing or entry in a regularly published law list;
- (4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;
- (5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:
- (i) existing or former clients;
  - (ii) other lawyers or professionals; or
  - (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;
- (6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;
- (7) a solicitation communication if the lawyer's use of the communication to secure

professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a solicitation communication that is requested by the prospective client.

(f) If requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written solicitation communication by which the lawyer seeks paid professional employment.

Terminology: See Rule 1.00 for definitions of “competence,” “firm,” “person,” and “written.”

### **Section VIII. Maintaining the Integrity of the Profession**

#### **Rule 8.01. Bar Admission, Reinstatement, and Disciplinary Matters**

An applicant for admission to the bar, a petitioner for reinstatement to the bar, or a lawyer in connection with a bar admission application, a petition for reinstatement, or a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission, reinstatement, or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.05.

Terminology: See Rule 1.00 for definitions of “knowingly” and “person.”

#### **Rule 8.02. Judicial and Legal Officials**

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, an adjudicatory official, or a public legal officer, or of a candidate for election or appointment to a judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Texas Code of Judicial Conduct.

(c) A lawyer who is a candidate for an elective public office shall comply with the applicable provisions of the Texas Election Code.

Terminology: See Rule 1.00 for definitions of “adjudicatory official” and “knows.”

**Rule 8.03. Reporting Professional Misconduct**

(a) Except as permitted in (c) or (d), a lawyer who knows that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate disciplinary authority.

(b) Except as permitted in (c) or (d), a lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.

(c) A lawyer who knows or suspects that another lawyer or judge whose conduct the lawyer is required to report pursuant to (a) or (b) is impaired by chemical dependency on alcohol or drugs or by mental illness may report that person to an approved peer assistance program rather than to an appropriate disciplinary authority. If a lawyer elects that option, the lawyer’s report to the approved peer assistance program shall disclose any disciplinary violations that the reporting lawyer would otherwise have to disclose to the authorities referred to in (a) and (b).

(d) This rule does not require disclosure of information protected by:

- (1) Rule 1.05, if the lawyer acquired the information in the course of or by reason of representing a lawyer to whom the information pertains; or
- (2) any statutory or regulatory provisions applicable to the counseling activities of the approved peer assistance program.

(e) A lawyer shall not make, or assist a client in making, any agreement that restricts a lawyer’s rights or obligations under this Rule.

(f) Within thirty (30) days of a finding of guilt or an order deferring adjudication by any court for the commission of an Intentional or Serious Crime, as defined by the Texas Rules of Disciplinary Procedure, a lawyer licensed in Texas shall report, in writing, to the Office of the Chief Disciplinary Counsel, the finding of guilt, including any verdict of guilty, plea of guilty or no contest, or deferred adjudication for an Intentional or Serious Crime. The appeal of the finding of guilt or order of deferred adjudication does not stay the duty to report.

Terminology: See Rule 1.00 for definitions of “fitness,” “knows,” “represents,” and “substantial.”

#### **Rule 8.04. Misconduct**

(a) A lawyer shall not:

- (1) violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
- (2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (4) engage in conduct constituting obstruction of justice;
- (5) state or imply an ability to influence improperly a government agency or official;
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of law or applicable rules of judicial conduct;
- (7) violate any disciplinary or disability order or judgment;
- (8) fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless the lawyer in good faith timely asserts a privilege or other legal ground for failure to do so;
- (9) engage in conduct that constitutes barratry as defined by the law of this state;
- (10) fail to comply with the Texas Rules of Disciplinary Procedure relating to notification of a lawyer's cessation of practice;
- (11) engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations in which a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Minimum Continuing Legal Education; or
- (12) violate any laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in (a)(2) of this Rule, "serious crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

Terminology: See Rule 1.00 for definitions of "fitness," "fraud," "fraudulent," and "knowingly."

### **Rule 8.05. Jurisdiction**<sup>7</sup>

(a) A lawyer is subject to the disciplinary authority of this state, if admitted to practice in this state or if specially admitted by a court of this state for a particular proceeding. In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined in this state for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04.

(b) A lawyer admitted to practice in this state is also subject to the disciplinary authority of this state for:

(1) an advertisement in the public media that does not comply with these rules and that is broadcast or disseminated in another jurisdiction, even if the advertisement complies with the rules governing lawyer advertisements in that jurisdiction, if the broadcast or dissemination of the advertisement is intended to be received by prospective clients in this state and is intended to secure employment to be performed in this state; and

(2) a written solicitation communication that does not comply with these rules and that is mailed in another jurisdiction, even if the communication complies with the rules governing written solicitation communications by lawyers in that jurisdiction, if the communication is mailed to an addressee in this state or is intended to secure employment to be performed in this state.

Terminology: See Rule 1.00 for a definition of “written.”

## **Section IX. Severability of Rules**

### **Rule 9.01. Severability**

If any provision of these Rules or any application of these Rules to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application of these Rules that can be given effect without the invalid provision or application and, to this end, the provisions of these Rules are severable.

Terminology: See Rule 1.00 for a definition of “person.”

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<sup>7</sup> The Court is still considering proposed revisions to Rule 8.05. At this time, there are no changes to the text of the rule; however, the Court incorporated a terminology reference directly after the rule.